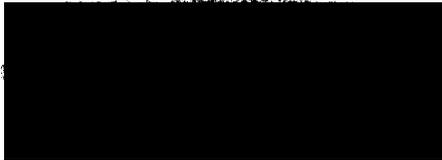


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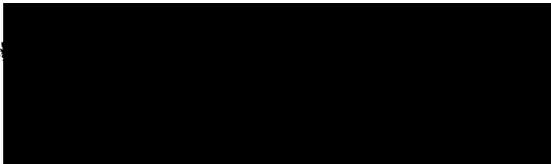
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FILE: WAC 04 074 52725 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an importer/exporter, manufacturer and distributor of beverages and beverage equipment. It seeks to employ the beneficiary as a public relations specialist and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a public relations specialist. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

IN THE AREA OF MARKET RESEARCH (16 per cent of the time)

- Analyze sales and financial data, and units operating practices;
- Prepare reports;
- Perform business administration tasks;
- Research economic trends;
- Promote new business opportunity through new products and business tactics;
- Research short and long term marketing decisions;
- Develop systems for the periodic review of sales, monitor profit and performance and make recommendations;
- Research the market and collaborate with management to elaborate on financial analysis;
- Supervise and administer the marketing budgets and assure compliance with budgetary guidelines and maximum cost effectiveness and utilization of all funds; and
- Evaluate marketing programs against established performance objectives.

IN THE AREA OF PROMOTIONAL STRATEGIES (24 per cent of the time)

- Improve organization and operational issues;
- Improve work performance;
- Research marketing conditions in the local and regional areas to promote expansion of business in these locations;
- Plan and initiate public relations programs;
- Research and develop strategies for franchising of business;
- Develop and implement marketing strategies to achieve sales and profit objectives;

- Report on the development and implementation of marketing plans to leverage business strengths and opportunities;
- Develop and recommend programs which will respond to current and projected compliance action;
- Review and evaluate competition of business, its programs, strategies and products offered; and
- Promote the business, through implemented advertising campaigns, special reports, and promotional correspondence.

IN THE AREA OF PUBLIC RELATIONS (60 per cent of the time)

- Assess and evaluate the management of all marketing objectives and identify potential issues and opportunities and make recommendations for appropriate courses of action;
- Structure customer surveys;
- Collaborate with management to integrate market strategies and programs;
- Participate and supervise the development and production of appropriate advertising and promotional materials in accordance with budgetary and quality standards;
- Develop and enhance the positive image of the company;
- Plan, produce and establish systems for distribution of information and promotion of sales by publications, special reports and multimedia;
- Coordinate activities and foster clientele;
- Incorporate public relations programs to permit the organization to interact with the community and keep clients informed of events; and
- Promote advertising campaigns, special reports, and promotional correspondence.

The petitioner requires a minimum of a bachelor's degree, with a concentration in interpersonal relations for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied but generally fall within those noted for advertising, marketing, promotions, public relations, and sales managers. These managers coordinate market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For

example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion the petitioner submitted copies of three public relations job advertisements and a statement from Sean Larkin, president of SPL Enterprises. Three job advertisements are insufficient in scope to establish an industry educational standard for the proffered position. Furthermore, the advertisements submitted are not from organizations similar to that of the petitioner, and do not state that a degree in a specific specialty is required for the positions advertised. Two of the advertisements require a bachelor's degree but do not state that the degree need be in any specific discipline. The third advertisement finds degrees in journalism, communications, public relations, and marketing to be acceptable. The advertisements do, in fact, confirm the statements contained in the *Handbook* for the educational requirements of the position, that degrees in a wide range of educational disciplines will qualify individuals for the position. The statement from SPL Enterprises indicates simply that it requires a bachelor's degree in public relations or a related field for its public relations specialist. The statement does not indicate that such a requirement is an industry wide standard. The evidence submitted does not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position as the position is new with the company. The petitioner has, accordingly, not established the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position appear to be routine for advertising, marketing, promotions, public relations, and sales managers. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. A degree in a wide range of educational disciplines will qualify an individual to perform the duties of those positions. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.